

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	CC Docket No. 01-338
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	
Carriers)	

**PETITION FOR RECONSIDERATION OR, IN THE ALTERNATIVE,
PETITION FOR CLARIFICATION**

Mountain Telecommunications, Inc. ("MTI"), by its attorneys, pursuant to Section 1.429 of the Commission's Rules, hereby petitions for reconsideration or, in the alternative, for clarification of the Second Report and Order issued in this proceeding.¹ As will be described in this petition, MTI seeks clarification or, to the extent necessary, reconsideration of one aspect of the All-or-Nothing Rule Order.

MTI is a telecommunications carrier headquartered at Tempe, Arizona. It is authorized by the Arizona Corporation Commission to provide telecommunications services, including local exchange services, in the State of Arizona. It provides service primarily over its own network facilities. However, it utilizes unbundled loops and unbundled dedicated interoffice transport to connect its customers with the network of Qwest Communications, the incumbent local exchange carrier throughout much of Arizona. In the vernacular of the era, MTI is a facilities-based CLEC.

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (Second Report and Order), FCC 04-164, released July 13, 2004 ("All-or-Nothing Rule Order").

MTI provides service only in the State of Arizona. While it is one of the larger and more successful CLECs in Arizona, that is its only market. Accordingly, MTI purchases said transport and loops on an unbundled network element basis only from one ILEC – Qwest, only in one state – Arizona.

In the All-or-Nothing Rule Order, the Commission modified its interpretation of Section 252(i) of the Communications Act of 1934, as amended. Section 252(i) provides that a “local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.” Prior to All-or-Nothing Rule Order, the Commission had implemented Section 252(i) with a rule which allowed requesting carriers to “pick-and-choose” from among individual provisions of publicly-filed state commission-approved interconnection agreements. That rule was commonly referred to as the “Pick-and-Choose Rule.” In the All-or-Nothing Rule Order, the Commission replaced the Pick-and-Choose Rule with an All-or-Nothing Rule which requires requesting carriers to opt in to entire agreements rather to specific provisions of agreements.

In MTI’s view, replacement of the Pick-and-Choose Rule with an All-or-Nothing Rule is regrettable and unwise since it is contrary to the clear statutory language of Section 252(i) and since it will undermine the efforts of competitive carriers to negotiate mutually satisfactory interconnection arrangements with ILECs. Having said that, MTI will leave to others requests that the entire All-or-Nothing Rule be reconsidered.

MTI hereby requests that the Commission clarify and, if necessary, reconsider paragraph 22 of the All-or-Nothing Rule Order. In responding to concerns raised by several commenters about the use of “poison pills” in interconnection agreements, the Commission stated that

volume or term discounts may be included in agreements so long as the volume or term of the discount is not discriminatory. Depending on how that statement is interpreted and applied, such tacit approval of volume discounts could significantly disadvantage those requesting carriers which are able to meet substantial volume commitments in a state but who may not be able to meet the same volume commitments as requesting carriers who are able to aggregate their commitments made to an ILEC across multiple states.

This concern is highly relevant to MTI and to other similarly-situated companies. MTI is one of the largest purchasers of Qwest's unbundled dedicated interoffice transport in the State of Arizona. As such, MTI is in a position to make significant volume commitments to Qwest for unbundled transport in Arizona. If other CLECs are willing and able to make larger volume commitments to Qwest for unbundled transport in Arizona, under the principle stated by the Commission in paragraph 22 of the All-or-Nothing Rule Order Qwest may be able to provide those other carriers with more favorable pricing than that available to MTI without Qwest violating the prohibition against discriminatory discounts.

However, it is important that paragraph 22 be clarified in a manner such that volume commitment-based discounts be limited to volume commitments within any one state. To the extent that it can not be so clarified, then the Commission should reconsider that paragraph so as to avoid the potentially discriminatory and anticompetitive consequences described herein. It should not be forgotten that the unbundled network elements provided pursuant to state-approved interconnection agreements are used by CLECs to provide local (*i.e.*, intrastate) service. This is so even in situations where ILECs provision transport facilities pursuant to their interstate Special Access tariffs on file with the Commission. An interpretation of paragraph 22 which would permit Qwest to provide network elements to other requesting carriers in Arizona at more


favorable prices than those available to MTI based on those other requesting carriers' commitments to purchase network elements and services from Qwest in other states where Qwest operates as an ILEC (Utah, Wyoming, Colorado, New Mexico, Washington, Oregon, Idaho, Nebraska, Montana, North Dakota, South Dakota, Minnesota and Iowa) would result in those other requesting carriers obtaining from Qwest services and facilities used by those CLECs to provide intrastate service in Arizona at discriminatorily favorable prices based on those other carriers' commitments to purchase intrastate service in other states.

Stated simply, neither Qwest nor any other ILEC should be allowed to discriminate in favor of a requesting carrier in one state based on that requesting carrier's commitments to purchase services or network elements from that ILEC in other states. To allow volume discounts based on multi-state commitments would render it virtually uneconomic for any single state CLEC to compete in that state, irrespective of how efficient are the CLEC's operations within that state. Moreover, such an interpretation of paragraph 22 will produce the anomalous result of the Commission sanctioning state commission approval of discriminatory discounts for intrastate services based on commitments to purchase services in other states.

WHEREFORE, for the reasons set forth in this petition for reconsideration or, in the alternative, petition for clarification, MTI respectfully urges the Commission either to reconsider or to clarify paragraph 22 of the All-or-Nothing Rule Order in accordance with the views expressed in this petition.

Respectfully submitted,

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